IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 32 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

Versus

JAYSHRI PRINTS

Appearance:

1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 32 of 2001
MS PJ DAVAWALA for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Heard Ms PJ Davawala learned counsel for the applicant-Commissioner of Excise, Surat. The respondent is served but none appears for the respondent.

2. At the hearing of this application, our attention is invited to the reply dated 18-10-2001 from the respondent - M/s. Jayshri Prints submitting that the matter pertains to the period prior to the amendment to the relevant statutory provision in May, 1994. Reliance is placed on the decision of the Delhi High Court in the case of M/s. Pioneer Silk Mills. It is further submitted the the Special Leave Petition of the Excise Department is pending before the Hon'ble Supreme Court but no stay is granted though SLP is admitted. It is further submitted that the decision in the case of Maheshwari Mills pertains to levy of duty which is not disputed by the respondent but the dispute is only in respect of fine/confiscation and for penalty for which there is no provision.

3. This Court has already granted Central Excise & Customs Gold Control Application No.14 of 1998 after considering the decision of the Delhi High Court in M/s. Pioneer Silk Mills.

4. Having regard to the order dated 6-4-1999 passed by this Court in C.E.C.G.A. No. 14 of 1998, the Central Excise, Customs and Gold (Control) Appellate Tribunal is directed to refer the following question of law to this Court and submit the statement of case in accordance with law:-

Whether penal provisions relating to confiscation of goods and imposition of penalty are applicable to Man Made Fabrics which are `Excisable Goods' finding mention in Schedule to the Central Excise Tariff Act,1985 though they are liable to Additional Duty of Excise only, in absence of any specific penal provisions in Section 3 (3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957 ?

5. Rule is made absolute.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-